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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

HAROLD R. HOKE, M.D., *Petitioner,*

v.

WARREN AKIN AND ALEX DENT, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether a Complaint states a cause of action under the Fourteenth Amendment and/or under 42 U.S.C. §1983, 1985, or 1986, where it is alleged that certain individuals:

(a) Caused the Petitioner's medical staff privileges to be summarily suspended;

(b) Caused the Petitioner to be indicted and arrested on charges of theft by taking;

(c) Caused a civil lawsuit to be instituted naming the Petitioner as a Defendant in a medical malpractice matter;

(d) Traveled to a former residence, in a different state, of the Petitioner in an attempt to gather information to improperly use against the Petitioner,

(e) Were members of a hospital authority which had the power and authority to make a summary suspension of staff privileges;

(f) Were member(s) of the grand jury which criminally indicted this Petitioner;

(g) Who advised the Petitioner that if he continued to attempt to reopen a criminal charge or case that there were several people who were waiting to sue the Petitioner, and "he ought to leave well enough alone";

2. Whether Summary Judgment was proper under the circumstances of this case, notwithstanding the presence of issues concerning the credibility of witnesses, impartiality and good faith of the respondents and their actions in their official and individual capacities.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. _____

HAROLD R. HOKE, M.D., *Petitioner,*

v.

WARREN AKIN AND ALEX DENT, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner, Harold R. Hoke, M.D., respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals

for the Fourth Circuit entered in this proceeding on March 17, 1981.

OPINIONS BELOW

The decision of the District Court for the Western District of North Carolina issuing orders dated February 16, 1979, January 9, 1980, and February 27, 1980, granting Summary Judgment and dismissing this action are reprinted in the Appendix to this Petition at 1A. The United States Court of Appeals for the Fourth Circuit, affirming the Judgment of the District Court on the 17th day of March, 1981, published no opinion. Its decision is reprinted in the Appendix at 5a.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was issued on March 17, 1981. This Petition is filed within 90 days of the Judgment. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, Constitution of the United States, reads in pertinent part, as follows:

> (N) or shall any State deprive any person of life, liberty, or property, without due process of law; . . . .
>
> * * *
>
> 42 U.S.C. §1983 reads as follows:
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

* * *

42 U.S.C. §1985 (3) reads in pertinent part as follows:

in any case of conspiracy set forth in this Section, if one or more persons engaged therein do, or cause to be done, any act in futherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. §1986 reads in pertinent part as follows:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in §1985 of this title, or about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case;

STATEMENT OF THE CASE

The Petitioner filed this action in the Western District of North Carolina alleging that the Respondents conspired to deprive him of his constitutional rights. The Complaint specifically alleged (citations to "J.A.

_____" are to the Joint Appendix in the Court of Appeals) that the Respondents were responsible for his summary suspension from staff privileges at Sam Howell Memorial Hospital in Cartersville, Georgia, the return of an indictment and an arrest in Cartersville for the offense of theft by taking; and the prosecution of a groundless medical malpractice lawsuit against this Petitioner. (J.A. 8)

The Complaint was thrust under the conspiratorial actions prohibited by 42 U.S.C. §1983, 1985, and 1986. The Complaint further alleged an overt act in the State of North Carolina, and sought compensatory relief as well as punitive damages.

The Petitioner moved to Cartersville, Georgia, sometime in March of 1973, and began the practice of medicine in the fields of obstetrics and gynecology. When the Petitioner opened his practice in Cartersville, he was immediately granted staff privileges at the local hospital, which was Sam Howell Memorial Hospital, and continued those staff privileges until on or about the third day of July, 1973 (J.A. 46) at which time the Petitioner was notified that the Executive Committee of the Medical Staff had met and discussed the manner in which he conducted a case and placed the Petitioner under a Summary Suspension. Both the Respondents were members of the Hospital Authority of Bartow County which involves the Sam Howell Memorial Hospital at the time that the Petitioner was suspended from practicing medicine at that hospital (J.A. 41).

It is also of significance that one of the Respondents, Mr. Akin, stated in his deposition that he did not discuss this case involving the Petitioner at any time in June or July of 1973 (J.A. 41); however, the Petitioner was able to retrieve a letter dated July 18,

1973, which specifically speaks to a discussion between the author of that letter and Mr. Akin (J.A. 47).

What is also remarkable is the fact that both Respondents (Mr. Dent, J.A. 28 and Mr. Akin, J.A. 26) do admit coming to Charlotte, North Carolina, in February of 1973, at which time they discussed the Petitioner with a Mr. Richardson of a local Charlotte hospital and with Mr. John Golding, that hospital's attorney, and took back to Georgia with them a deposition of this Petitioner involving a pending case against a North Carolina hospital. Both Respondents repeatedly admitted that the purpose and reason for their trip to Charlotte, North Carolina was an investigation to inquire about newspaper articles concerning this Petitioner which had appeared in Charlotte newspapers. (J.A. 39)

It was further elicited from Mr. Dent that the newspaper articles in the Charlotte newspapers concerned Dr. Hoke suing the local hospital (J.A., 39 - 40); in fact, Mr. Dent specifically recalled getting a taxi when he first arrived in Charlotte and going to Presbyterian Hospital (J.A. 39).

Although it certainly would be conceivable that a hospital authority would request an investigation concerning a physician wanting staff privileges, and the trip to North Carolina by Mr. Akin and Mr. Dent was within the immediate time frame of Dr. Hoke making application for staff privileges, the validity pales upon reading the affidavit of one Lynette Fink. (J.A. 45) This Affidavit specifically states that after making an exhaustive search of the Charlotte News and Charlotte Observer newspapers from August 10, 1972 (the date the lawsuit was filed which Respondents alleged they were investigating) until February 23, 1973, no article of any nature whatsoever was found concerning this Petitioner.

The glaring defect in the Respondents' position that they did come to Charlotte, North Carolina for purposes of investigating newspaper articles is totally negated by the aforementioned affidavit and brings forth a much more important question which is what purpose did they come to North Carolina when their explanation is an impossibility?

Mr. Akin further clouds his own credibility by his sworn testimony in denying that he has testified in any prior case involving Dr. Hoke and more specifically by his strong emphasis of being positive that he had not, in fact, testified previously (J.A. 42) when, in fact, the record shows that Mr. Akin was deposed on November 4, 1974, in Cartersville, Georgia, in a totally different lawsuit from the present one in which he is involved (J.A. 42).

The pleadings also show that the Petitioner was indicted by the grand jury of Bartow County, Georgia on a charge of theft by taking (J.A. 8), and although the Respondent Dent is not being pursued in his official capacity, he was in fact, a member of the Bartow County Grand Jury which considered and returned an indictment against this Petitioner on or about July 28, 1973 (J.A. 32 - 33).

The Petitioner further shows that he could have introduced evidence at a trial to show that one of the Respondents' business associates had a proprietary interest in the drug store where the Petitioner was criminally charged and that certainly this had some influence on the bringing of such charge. (See Court of Appeals Decision, Appendix 5a). The Court of Appeals further noted the Petitioner's personal theory as revealed by his deposition was that the same insurance company which represented the Charlotte hospital (which Hoke

had been involved in litigation with) retained Akin as local counsel in Cartersville cases where the company was involved and thus Akin and Dent, in conjunction with other persons associated with the company, were retaliating against Hoke because of his suit against the Charlotte hospital (See Decision Court of Appeals, Appendix 5a).

Following discovery, the District Court granted the Defendants' Motion for Summary Judgment on the claims (Appendix, Page 1a) and upon a Motion for Reconsideration and Motion to Amend Prior Order filed by the Petitioner, the District Court reaffirmed its decision as to the Summary Judgment (Appendix 2a). And on the 27th day of February, 1980, the District Court issued a final order of dismissal (Appendix 4a).

The Petitioner appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed without a published opinion (Appendix 5a).

The Petitioner seeks a Writ of Certiorari to review (1) the holding below that the Petitioner failed to promote any legal theory upon which recovery could be based; and (2) the propriety of Summary Judgment in this case given the obvious need for a trier of fact to weigh the credibility of witnesses under all the circumstances.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Is In Conflict With Applicable Decisions Of This Court, Or At A Minimum Presents Major Questions Concerning The Interpretation Of A Decision Of This Court Significantly Affecting The Quality Of Justice

In the United State Supreme Court case of *Adickes* v. *S. H. Kress and Company,* 398 U. S. 144 (1970), this Court grappled with a similar fact situation as the case at bar in deciding that on such a factual set of circumstances a Motion for Summary Judgment as to a conspiracy count was improper. *Adickes* is instructive on two counts. The first is that this Court laid down criteria that when a Plaintiff pursues an action under 42 U.S.C. §1983 two elements are necessary. First, the Plaintiff must prove that the Defendant has deprived him of a right secured by the "Constitution and laws of the United States"; second, the Plaintiff must show that the Defendant deprived him of his constitutional rights, "under color of any statute, ordinance, regulation, custom, or usage, of any state or territory". This second element has been held to require that the Plaintiff show that the D..endant acted under "color of law," 398 U.S. at 150.

Both of these Respondents admit that at the time of the trip to Charlotte, North Carolina in February, 1973 they were members of the Hospital Authority of Bartow County, which involved Sam Howell Memorial Hospital, and made that trip on behalf of that hospital authority (J.A. 41). Mr. Dent also admits that he was a member of the grand jury for Bartow County when a Bill of Indictment was returned against this Plaintiff in July of 1973 (J.A. 27). It is generally accepted that both of these status and positions are sufficient under "color of law"

to encapsulate the Respondents' status as being subject to 42 U.S.C. §1983.

Because the *Adickes* case, *supra.*, is so closely akin to the case involved in this Petition, a factual analysis of the two should be made. *Adickes* was a volunteer teacher at a "freedom school" for black children in Hattiesburg, Mississippi. Upon entering a store restaurant with six of her students for lunch, Adickes was refused service and arrested on a charge of vagrancy. Adickes brought a lawsuit based on the store's refusal to serve her and that the refusal of service and the subsequent arrest had been the product of a conspiracy between the store and the police to violate her constitutional rights. On certiorari, Justice Harlan, expressing the view of seven members of this Court, held that the Summary Judgment on the conspiracy count had been improper because the store had failed to carry its burden of foreclosing the possibility of an understanding between its employees and the police. Justice Harlan noted that the District Court had found no evidence in the Complaint, Affidavits, or other papers from which, " . . . a reasonably minded person," could draw an inference of the alleged conspiracy. The Court went on to note that the movant had argued that the uncontested facts had established a lack of conspiracy, 398 U.S. at 153.

It is important that *Adickes* further contended to the District Court that she had no knowledge of any communication between any Kress employee and any members of the Hattiesburg police, and was relying on circumstantial evidence to support her contention that there was an arrangement between Kress and the police. 398 U.S. at 155, 156. The Supreme Court agreed with the Petitioner in the *Adickes* case that the sequence of events created a substantial possibility of a conspiracy to

allow her to proceed at trial, " . . . especially given the fact that the non-circumstantial evidence of a conspiracy could only come from adverse witnesses." 398 U.S. at 157.

It is significant that in the *Adickes* case part of the reason that this Court held that a Summary Judgment was not proper was the fact that a policeman was inside the department store and the possibility of a conspiracy did, in fact, exist. The Plaintiff in this lawsuit has made allegations, and those allegations have been admitted by the Respondents, that both of these Respondents were in fact in the State of North Carolina to allegedly make an investigation of the Plaintiff and to gather information about the Plaintiff and did gather information about the Plaintiff which they took back to the State of Georgia. It is the facts and circumstances present which lends itself to a strong disfavor in this type of case to foreclosing the trial possibility by the granting of Summary Judgment. In fact, the criteria laid out by the United States District Court for the District of Delaware in the *Deterjet Corporation* v. *United Aircraft Corporation,* 211 F.Supp. 248 (1962), specifically, mandates that once a conspiracy charge is made and such a conspiracy raises a question of fact or a question of factual inference, it may not properly be disposed of on Summary Judgment unless a conspiracy is impossible as a matter of law or the Plaintiff has by his own words or through documents willed the alleged conspiracy out of existence.

Another Supreme Court decision which should apply in this set of circumstances is the case of *Poller* v. *Columbia Broadcasting Systems,* 368 U.S. 464 (1962), which dealt with a complex anti-trust litigation with allegations of a conspiracy. The Court, in *Poller,* stated:

> It may be that upon all of the evidence a jury would be with the respondents. But we cannot say on this

record that 'it is quite clear what the truth is.' Certainly, there is no conclusive evidence supporting the respondents' theory. We look at the record on Summary Judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted. We believe that Summary procedures should be used sparingly in complex anti-trust litigation *where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators and the hostile witnesses thicken the plot.* It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. *Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'* 368 U.S. 472-473 (emphasis supplied).

This Court has also stated in the case of *Norfolk Monument Company, Inc.* v. *Woodland Memorial Gardens,* 394 U.S. 700 (1969), that in a conspiracy case, the courts must be extremely careful and very sparingly use Summary Judgment to allow a case to be disposed of. In the *Norfolk* case, this Court reversed the granting of a Summary Judgment by the District Court, which was affirmed by the Fourth Circuit Court of Appeals, basically saying that the alleged conspiracy had not been conclusively disproved by pre-trial discovery and there remained material issues of fact which could only be resolved by a jury and cautioned the use of summary procedures where motive and intent played leading roles.

It is submitted that if the Petitioner had not totally discredited the Respondents by independent evidence, that this matter would still not be one where a Summary Judgment should be granted; but, specifically in view of the fact that the only way that the District Court could have granted a Motion for Summary Judgment was to

rule on the credibility of the parties involved and disregarded the discrediting of the Respondents by the Petitioner, which has been strongly disfavored among the federal judiciary. (See *Slavin* v. *Currie*, 574 F.2d 1256 (5th Cir., 1978), *Smith* v. *Hudson*, 600 F.2d 60 (6th Cir. 1979), *National Aviaiton Underwriters, Inc.* v. *Altus Flying Service*, 555 F.2d 778 (10th Cir., 1977).

2. There Is A Conflict In The Decisions Of The Lower Federal Courts On The Question Of The Propriety Of Granting Of Summary Judgment Under These Circumstances Which Should Be Resolved By This Court

In *Adickes* v. *S. H. Kress*, 398 U.S. 144 (1970), this court held that on a Motion for Summary Judgment in the circumstances where a conspiracy is alleged to violate one's civil rights, that the Respondent has, as the moving party, the burden of showing that there is an absence of a genuine issue as to any material fact and Summary Judgment must be denied if the Respondents failed to foreclose the possibility of the conspiracy alleged. (398 U.S. 157). Although a large majority of the lower circuit courts have the common denominators of denying Summary Judgment on such criteria, there is no uniformity as to what findings are required before superimposing that criteria.

The Petitioner has attempted to glean from the recent decisions involving conspiracy the test or criteria that appellate courts have formulated to determine whether or not such a case is in a posture for the granting of such a remedy.

One set of cases seems to hold that the granting of a Summary Judgment is inappropriate if the parties disagree on inferences which may be reasonably drawn from undisputed facts. This was the holding in *Morrison*

v. *Nissan Motor Company,* 601 F.2d 139 (4th Cir. 1979); and *Winters* v. *Highland Insurance Company,* 569 F.2d 297 (5th Cir. 1978).

Another criterion which has been used in the Second Circuit case of *Crowley* v. *Matson Navigation Corporation,* 434 F.2d 73 (5th Cir. 1971) is that the test is whether reasonable persons might differ as to the significance of a material fact.

Another criterion was espoused in *Inland Oil and Transport* v. *United States,* 600 F. 2d 725 (8th Cir. 1979), where the Court specified that Summary Judgment is an extreme remedy which may not be granted unless the movant has established his right to Judgment beyond controversy, *Id.* at 726.

Still another criteria has been enunciated in the Tenth Circuit in *National Aviation Underwriters, Inc.* v. *Altus Flying Service,* 555 F.2d 778 (10th Cir., 1977) where the Court specifically stated that a Motion for Summary Judgment must be denied unless the movant demonstrates his entitlement to it beyond doubt.

In view of the widespread confusion among the lower federal courts as to what criteria should be used in the granting or denying of a Summary Judgment under a conspiracy theory (especially for violation of civil rights), this Court should grant the Writ to resolve the question.

3. Summary Judgment Was Plainly Inappropriate In The Circumstances Of This Case

The Petitioner shall not belabor this section with multiple citations, but under the federal rules and the Constitution, Summary Judgment is appropriate only if there are no genuine factual disputes to resolve.

In this case Summary Judgment was granted, even though the parties were in sharp dispute over the existence of what occurred in the minds of men after uncontroverted facts did occur. There is no question that numerous overt actions followed the Respondents' trip to North Carolina and because of the allegations and intrinsic defects in the Respondents' explanation of that trip and the circumstances and events which occurred subsequent thereto, only an impartial trier of fact should resolve, among other things, issues of credibility.

The granting of Summary Judgment was plainly in conflict with applicable decisions of this court. (See *Sartor* v. *Arkansas Natural Gas Corporation,* 321 U.S. 620 (1944).

CONCLUSION

For the reasons stated, it is respectfully prayed that a Writ of Certiorari should issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted.

/s/ WILLIAM H. ELAM
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Attorney for Petitioner

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

C-C-78-181

HAROLD R. HOKE, *Plaintiff,*

v.

WARREN AKIN and ALEX DENT, *Defendant.*

ORDER

(Filed February 16, 1979)

In accordance with the court's order filed December 18, 1978, defendants have moved for summary judgment.

The court has reviewed the record, including the depositions of the parties, and has determined (a) that there are no genuine issues of material fact; (b) defendants are entitled to judgment on all claims as a matter of law; and (c) plaintiff's action is frivolous and unreasonable, and was instituted and pursued without foundation and probably, in a legal sense at least, in bad faith.

The court will hold the record open for twenty (20) days from the filing date of this order, prior to entering judgment, to allow defendants, if they are so inclined, to petition the court for reasonable attorney's fees. *See, e.g., Runyon* v. *McCrary,* 427 U.S. 160, 182-83 (1976). Any such petition shall conform to the guidelines established in *Johnson* v. *Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir. 1974).

This 16 day of February, 1979.

/s/ JAMES B. MCMILLAN
James B. McMillan
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

C-C-78-181

HAROLD R. HOKE, *Plaintiff,*

v.

WARREN AKIN and ALEX DENT, *Defendants.*

ORDER

(Filed January 9, 1980)

On April 9, 1979, the court heard argument on plaintiff's motion for reconsideration of the court's earlier stated intention to allow summary judgment as to all defendants, as well as attorneys' fees.

The court remains convinced that, after substantial discovery, there is no evidence to support recovery on any theory suggested by plaintiff. At best, the record, viewed most favorably to plaintiff, *suggests* minor inconsistencies in the recounting of past events, *all* of which relate to *collateral* matters, *none* of which are remotely suggestive of the viability of plaintiff's claims under the civil rights statutes, except by extended speculation and conjecture.

It is possible that the taking of prefiling depositions, or a more substantial preliminary investigation, might have sharply curtailed the expenses incurred by all parties, and perhaps might have eliminated the felt need for this lawsuit. In any event, defendants are entitled to substantial fees, although not as much as they have petitioned for. *F. D. Rich Co.* v. *Industrial Lumber Co.,* 417 U.S. 116, 129 (1974). The parties are urged to try once more to agree on the amount of fees to be borne by plaintiff. If no agreement is made known to the

court within ten days of the filing date of this order, the court will award fees and enter judgment.

This 8 day of January, 1980.

/s/ JAMES B. MCMILLIAN
James B. McMillan
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

C-C-78-181

HAROLD R. HOKE, *Plaintiff,*

v.

WARREN AKIN and ALEX DENT, *Defendants.*

FINAL ORDER OF DISMISSAL

There are no further questions in dispute in this case, as summary judgment was granted in the court's order of February 16, 1979, and attorneys' fees were assessed in the court's order of February 11, 1980.

The case is therefore DISMISSED.

IT IS SO ORDERED, this 27th day of February, 1980.

/s/ JAMES B. MCMILLAN
James B. McMillan
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1197

HAROLD R. HOKE, *Appellant*,

v.

WARREN AKIN; ALEX DENT, *Appellees*.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. James B. McMillan, District Judge.

Submitted: November 20, 1980
Decided: March 17, 1981

Before MURNAGHAN, SPROUSE, and ERVIN, *Circuit Judges*.

(William H. Elam on brief for the Appellant. James E. Walker, Robert P. Johnston, Walker, Palmer & Miller, P.A., and C. Ralph Kinsey, Jr., Caudle, Underwood & Kinsey, P.A., on brief for the Appellees.)

PER CURIAM:

Doctor Harold Hoke filed this action in the Western District of North Carolina alleging that defendants Akin and Dent conspired to deprive Hoke of his constitutional rights. Specifically, Hoke alleged that they were responsible for his summary suspension from staff privileges at the Sam Howell

Memorial Hospital in Cartersville, Georgia, the return of an indictment by a Cartersville grand jury for the offense of theft by taking, and the prosecution of a groundless medical malpractice suit against Hoke. With one exception, all of the acts alleged to be a part of the conspiracy, and every effect of that conspiracy, took place in the state of Georgia. These conspiratorial acts allegedly violated 42 U.S.C. §§1983, 1985, and 1986. Hoke sought $1,000,000 in compensatory relief as well as punitive damages.

All three parties to the suit were deposed prior to the filing of defendants' motions for summary judgment. After examining these depositions, the lower court determined that Hoke adduced no evidence to support recovery under any theory advanced. Furthermore, the action was described as "frivolous and unreasonable, and was instituted and pursued without foundation and probably, in a legal sense at least, in bad faith." After our independent examination of the record, we find ourselves in agreement with this succinct analysis; we therefore affirm the entry of summary judgment for the defendants.

The facts and circumstances alleged in Hoke's pleadings and described by him in his deposition depict a rather unusual scenario. According to Hoke, he came to Cartersville, Georgia in March, 1973, as a specialist in the field of obstetrics and gynecology. Prior to his arrival in Cartersville, he had practiced for about 17 years in five different cities in North and South Carolina. Upon his arrival, he immediately was granted staff privileges at the local hospital, and his practice in Cartersville steadily grew until July, 1973, when his staff privileges were summarily suspended. After retaining local counsel, Hoke met with the hospital's Executive Committee and was informed that his suspension was occasioned by an unauthorized and incomplete anesthetization of a patient.[1]

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[1] The anesthetization incident was not the sole matter upon which the committee relied, but it was the most shocking; supposedly, a physician in an adjoining room actually heard the patient scream-

Hoke claims that, following the suspension, he was "framed" when an employee of a local drugstore accused him of stealing a can of deodorant. He was arrested, and the grand jury returned an indictment for the offense of theft by taking. Upon the advice of new counsel, Hoke left Cartersville and moved to Charlotte, North Carolina, where he presently resides.[2] Meanwhile, the patient who supposedly was wrongfully and improperly anesthetized filed a civil malpractice claim against him.[3]

Hoke now contends that the suspension, the indictment, and the malpractice suit were all part of a conspiracy in which Akin and Dent participated. The genesis for Hoke's accusation was his discovery in 1977 that Akin and Dent, in their capacity as members of the Bartow County Hospital Authori-

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ing. Hoke admits that the anesthesia was not totally effective, but he contends that the problem was exaggerated and simply a pretext for the committee's action. For the purposes of this appeal, we have assumed that the incident in fact constituted insufficient grounds for the action taken.

[2] Hoke claims that the attorney whom he retained to represent him before the Executive Committee suggested that he quietly accept the suspension. Feeling that he was wronged by the committee's decision, Hoke announced his intention to fight the decision and retained counsel from another town to represent him in his fight against the suspension and in the criminal matter. According to Hoke, the second attorney instructed him to leave Cartersville before "they" framed him with a more serious charge. Furthermore, according to Hoke, he heard that the local judge intended to incarcerate him for the theft of the can of deodorant. Defendants, on the other hand, contend that Hoke's leaving town was part of an agreement whereby no minutes would be kept of the hearing regarding Hoke's suspension if he would leave town. This arrangement supposedly was proposed by Hoke's attorney. Again, for the purposes of this appeal, we have assumed that Hoke moved from Cartersville because he feared that he would be charged with some serious offense he did not commit.

[3] Hoke contends that, up to the time she was removed from his care, the patient was very satisfied with the services he provided.

ty, met in Charlotte in February, 1973, with the attorney for a Charlotte hospital against which Hoke had a civil suit pending. Hoke's personal theory, as revealed in his deposition, is that the same insurance company which represented the Charlotte hospital retained Akin as local counsel in Cartersville cases where the company was involved; thus Akin and Dent, in conjunction with other persons associated with the company, were retaliating against Hoke because of his suit against the Charlotte hospital. The object of this conspiracy was to ruin his professional reputation, cause him the loss of income, and expose him to public humiliation.

We agree with the district court that Hoke's efforts to implicate Akin and Dent in this affair are entirely conjectural and speculative,[4] and that no material factual issue remains concerning Akin's and Dent's participation in a conspiracy to deprive Hoke of his constitutional rights. *See Williams* v. *Hyde Co. Bd. of Ed.*, 490 F.2d 1231 (4th Cir. 1974); *Atlantic States Const. Co.* v. *Robert E. Lee & Co.*, 406 F.2d 827, 829 (4th Cir. 1969). The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. We thus dispense with oral argument and affirm the district court's judgment.

AFFIRMED,

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[4] The evidence Hoke claims he could introduce would show that the alleged purpose of the trip to Charlotte was not the true purpose; Akin was present at the hospital committee meeting attended by Hoke; a business associate of Akin held a proprietary interest in the drugstore; and Dent was a member of the grand jury which indicted Hoke.